UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,156	08/31/2000	Oliver Hecker	AP9472	3844

10291 7590 03/11/2004

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER	
BURCH, MELODY M	

ART UNIT	PAPER NUMBER
3683	

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 26

Application Number: 09/530,156
Filing Date: August 31, 2000
Appellant(s): HECKER ET AL.

Bradley J. Diedrich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/8/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 10, and 17-19 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,027,182 Nakanishi et al. 2-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

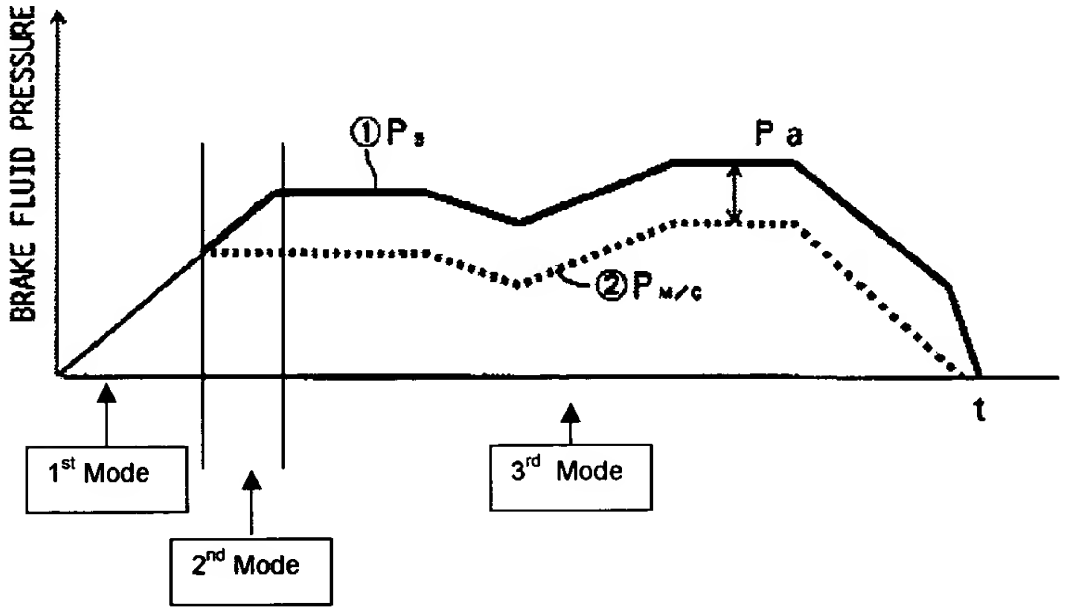
The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 10, 17, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6027182 to Nakanishi et al.

Re: claims 1, 10, 17, and 19. Nakanishi et al. Nakanishi et al. show in figure 3 a method of operating a brake assist system which comprises a first mode as labeled in the attached copy of figure 3 in which the brake assist system is not actuated, a second mode of operation as labeled in the attached copy of figure 3 in which after recognition

of an emergency brake situation a pressure build-up of wheel brakes is generated, and a third mode of operation labeled in the attached copy of figure 3 which is provided for the transition from the second into the first mode of operation, comprising the steps of: monitoring the wheel brake pressure in the third mode of operation as disclosed in col. 13 lines 35-42 and in col. 17 lines 63-65, determining when the monitored wheel brake pressure is excessively elevated compared to the tandem master cylinder pressure as disclosed in col. 13 lines 65-66, and controlling the amount of excess elevation by functionally correlating the wheel brake pressure with the monitored master cylinder pressure throughout the duration of the third mode of operation as disclosed in col. 13 lines 35-55 and inferred in col. 17 line 66 - col. 18 line 8.

FIG. 3



Examiner notes that Nakanishi et al. show throughout the duration of the third mode as the controlling step further including the step of determining a mometary value of the wheel brake pressure by multiplying a momentary value of a time-dependent excess function with the momentary value of the master cylinder pressure. As discussed in the specification of the instant application pwheel(t) = K(t) * pmc(t) or pwheel(t) / pmc(t) = K(t). Examiner maintains that the ratio of pwheel(t) / pmc(t) is inherently shown throughout the duration of the third mode of operation in Nakanishi et al. since at each time in the graph there is a wheel brake pressure value and a master cylinder pressure value. Nakanishi et al. also show the limitation wherein the controlling step further includes keeping the excess elevation function constant in time intervals in which the master cylinder is increasing as shown in figure 3 in the portion of the third mode in the area of the encircled number 2.

Re: claim 18. Nakanishi et al. disclose in col. 13 lines 51-53 the method further including the step of presetting a maximum value for the excess elevation.

(11) Response to Argument

In lines 6-7 from the bottom of pg. 9 of the Appeal Brief, Applicant argues that the pressure Pa in the Nakanishi reference is abruptly terminated without any controlled diminution. Examiner notes that the argument is more specific than the claim language.

In the last three lines of pg. 9 and in lines 5-7 of pg. 10 of the Appeal Brief, Applicant argues that Nakanishi does not disclose determining a momentary value of the wheel brake pressure by multiplying a momentary value of a time-dependent excess elevation function K(t) with a momentary value of the master cylinder pressure, but

instead determines the wheel brake pressure by multiplying the master cylinder pressure with a constant. Examiner notes that Applicant's claim language and specification do not preclude the use of a time-dependent excess elevation function K(t) being constant over time. In fact, Applicant admits in the last two lines of pg. 5 of the Brief that during certain phrases of the brake control of the instant invention the time-dependent excess elevation function K(t) is constant.

Applicant further argues that even in the last part of the 3rd mode of the Nakanishi reference the pressure Pa is not controlled by multiplying a momentary value of a time-dependent excess elevation function with a momentary value of the master cylinder pressure. As noted above and as discussed in the specification of the instant application pwheel(t) = K(t) * pmc(t) or written another way, pwheel(t) / pmc(t) = K(t). As clearly illustrated in the last part of the 3rd mode of the Nakanishi reference shown in figure 3 the excess elevation function or the ratio of wheel brake pressure and master cylinder pressure is decreasing with time. Examiner notes that in this area of the 3rd mode the master cylinder pressure declines and K(t) declines. Such behavior is similar to that of the instant application. In fact, Applicant admits in the last line of pg. 5 of the Brief that "in phases in which $p_{TMC}(t)$ declines, K(t) declines".

Examiner concludes by noting that instead of controlling the amount of excess elevation as claimed, the instant application is actually controlling the wheel brake pressure by multiplying the master cylinder pressure by some amount K(t). Nakanishi controls the wheel brake pressure by multiplying the master cylinder pressure first by a K(t) amount that is constant with time as evident by the constant excess elevation

shown in the areas of the encircled number 1 and the encircled number 2 in figure 3 of Nakanishi followed by a K(t) amount that is decreasing with time shown in the area near the end of the 3rd mode.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

mmb 3/5/04
mmb
March 5, 2004

Conferees
jl
mg

JACK LAVINDER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610